

Remarks

Claims 1-13 are pending in the application. Claims 3-5, 7, and 10-12 were withdrawn and claims 1, 2, 6, 8, 9 and 13 were rejected. By this amendment, claims 1 and 8 have been amended. Reconsideration of the claims is respectfully requested. No new matter has been added.

Rejection Under 35 U.S.C. § 102

Claims 1 and 8 were rejected under § 102(b) as being anticipated by U.S. Patent No. 6,193,024 issued to Heppes et al. (hereinafter "Heppes '024"). Heppes '024 does not disclose a backplate that includes a hole and is attached to a brake pad as required by claims 1 and 8. Instead, Heppes '024 discloses a backplate (4) having a damping plate (1) disposed on a first side and a brake lining (5) disposed on the opposite side (column 3, lines 59-61). The hole (17) cited by the Examiner is disposed in the damping plate, not the backplate as required by claims 1 and 8. Consequently, a *prima facie* case has not been established.

Moreover, Heppes '024 does not disclose or even remotely suggest a tuned mass damper disposed in the hole in the backplate for damping vibrations as required by claims 1 and 8. The radial material strip (18) pointed to by the Examiner does not dampen vibrations. Instead, the material strip facilitates the distribution of stress over the damping plate to improve damping plate life and reduce localized stresses (column 1, lines 58-67, column 2, lines 10-12). Consequently, a *prima facie* case has not been established and Applicants request that this rejection be withdrawn. Since claims 2, 6, 9 and 13 depend on claims 1 and 8, Applicants believe these claims are allowable for the same reasons.

Claims 1 and 8 were rejected under § 102(b) as being anticipated by U.S. Patent No. 3,198,294 issued to Stacy (hereinafter "Stacy '294"). Stacy '294 does not disclose or even remotely suggest a tuned mass damper disposed in a backplate hole as required by claims 1 and 8. Instead, Stacy '294 discloses a "fastener comprising a slotted head 42 adapted to be rotated by a screwdriver and a T-shaped portion (43) adapted to be inserted through [a] slot

(39)” that is disposed in a cup shaped stud (38) (column 4, lines 41-44). The fastener forces the flexible backup plate (21’’) of a brake lining (12) against a rubberlike pad (20). The fasteners and rubberlike pad “allow each of the [brake lining] blocks to tilt slightly and accommodate the outer surfaces of the brake disk to thereby develop equal pressure over the faces of the blocks and prevent any localized heating” (column 3, lines 40-43). Moreover, the fastener “allows vibration” of the brake lining (column 3, line 49). Consequently, the fastener is not a tuned mass damper that since it facilitates vibration rather than dampening it. For these reasons, Applicants believe this rejection has been overcome. Since claims 2, 6, 9 and 13 depend on claims 1 and 8, Applicants believe these claims are allowable for the same reasons.


Rejection Under 35 U.S.C. § 103

Claims 6 and 13 were rejected under § 103(a) as being unpatentable over U.S. Heppes ‘024 and Stacy ‘294 in view of U.S. Patent No. 4,691,810 issued to Matsuzaki. Since claims 6 and 13 depend on claims 1 and 8, respectively, the rejection of these claims is believed to be moot for the reasons previously discussed.

Conclusion

Applicants have made a genuine effort to respond to the Examiner's objections and rejections in advancing the prosecution of this case. Applicants believe all formal and substantive requirements for patentability have been met and that this case is in condition for allowance, which action is respectfully requested.

Respectfully submitted,

By 
Matthew M. Mietzel
Reg. No. 46,929
Attorney/Agent for Applicant

Date: July 12, 2004

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351